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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

NATHANIEL RAY JOHNSON,

Defendant and Appellant.

F069326

(Super. Ct. No. F12901141)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Don Penner, Judge.

Patrick J. Hennessey, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Poochigian, Acting P. J., Detjen, J. and Peña, J.

INTRODUCTION

Appellant Nathaniel Ray Johnson pled no contest to assault with a deadly weapon, a violation of Penal Code section 245, subdivision (a)(1),¹ pursuant to a plea agreement. He was sentenced in accordance with the terms of the plea agreement. Johnson appealed; he did not obtain a certificate of probable cause. Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 23 Cal.3d 436. Johnson did not submit a supplemental brief. We will affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

Because Johnson pled to the offense, we take the facts from the preliminary hearing transcript. Jasmine Williams testified at the preliminary hearing that on February 14, 2012, at around 5:00 p.m., she was on a city bus. Johnson was two seats behind her on the bus. Williams heard Johnson insulting and swearing at a young boy on the bus; Williams spoke to Johnson about his behavior. Johnson responded, “fuck you, bitch.” Johnson then began threatening her, stating, “I will fuck you up.” Williams went to get off the bus. As she was on the step of the bus, she was pushed from behind. Williams looked back as she fell and saw only Johnson behind her. Johnson stepped off the bus and began hitting Williams with his cane. He hit Williams five or six times in the head, left shoulder, and back.

Two men who had been on the bus got off and restrained Johnson. The bus driver called the police. Williams had a knot on her head, torn skin on her face, bruising, blood on her face, and pain as a result of Johnson’s attack.

On February 16, 2012, a criminal complaint was filed charging Johnson with a felony violation of section 245, subdivision (a)(1) and a misdemeanor battery, a violation of section 242. He was arraigned on February 17, 2012, and pled not guilty.

¹All further statutory references are to the Penal Code unless otherwise specified.

The preliminary hearing was held on October 23, 2012. Johnson was held to answer and again pled not guilty.

On March 7, 2013, Johnson entered a change of plea pursuant to a plea agreement. The plea agreement called for Johnson to plead no contest to the assault with a deadly weapon charge. The agreement further called for a “lid” of the midterm of three years and the dismissal of the remaining charge. At the change of plea hearing, the trial court carefully explained to Johnson his constitutional rights and the consequences of entering a plea. Johnson affirmatively stated he understood his rights and the consequences of entering a plea. The trial court indicated, however, it would be ordering a diagnostic study to determine Johnson’s ability to function successfully on probation.

On April 22, 2013, Johnson failed to appear and a bench warrant was issued. On February 26, 2014, Johnson was present in court; the trial court ordered criminal proceedings suspended and referred Johnson for the diagnostic study. A report on the results of the diagnostic study was filed with the trial court on April 28, 2014. That report concluded Johnson would be a poor candidate for probation.

On April 28, 2014, Johnson was before the trial court for a return on the diagnostic study and sentencing. The trial court reinstated criminal proceedings and indicated it had read the report of the diagnostic study and the probation report. The trial court evaluated mitigating and aggravating factors, stating they were “roughly balanced.” The trial court imposed the midterm of three years, which was within the “lid” specified in the plea agreement. The trial court awarded 281 days of credit—141 actual days and 140 days of conduct credit. Various fines and fees were imposed.

On May 2, 2014, a notice of appeal was filed, indicating the appeal was based upon “the sentence or other matters occurring after the plea that do not affect the validity of the plea.” No certificate of probable cause was requested or granted.

Appellate counsel filed a *Wende* brief on October 23, 2014. No supplemental brief was filed by Johnson.

DISCUSSION

Appellate counsel filed a *Wende* brief; Johnson did not file a supplemental brief. Our review of the record discloses the trial court explained to Johnson his constitutional rights, and Johnson indicated he understood and waived those rights; Johnson knowingly and voluntarily entered into a plea agreement; and Johnson had an adequate opportunity to discuss the plea agreement and the consequences of entering a plea with his counsel. He signed a waiver of rights and plea form. Johnson was sentenced in accordance with the terms of the plea agreement. The plea agreement specified a maximum three-year “lid” in exchange for Johnson’s plea; the trial court imposed the midterm of three years.

The abstract of judgment accurately reflects the sentence imposed, with the exception of the number of days of actual time credit. The trial court awarded 141 days of actual credit, plus 140 days of conduct credit, for a total of 281 days. The abstract of judgment contains a clerical error in that it reflects the correct number of total days of credit and conduct credit, but erroneously states 144 days of actual time credit were awarded.

After an independent review of the record, we find that no reasonably arguable factual or legal issues exist, except for the clerical error in the abstract of judgment. This court has the inherent power to correct clerical errors in the abstract of judgment. (*People v. Jones* (2012) 54 Cal.4th 1, 89.) We will direct that the abstract be corrected to conform to the oral pronouncement of judgment. (*Ibid.*)

DISPOSITION

The judgment is affirmed. The trial court is directed to prepare and transmit to the appropriate authorities an amended abstract of judgment reflecting the 141 days of actual time credit awarded.